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OFFICE OF PETITIONS

In re Application of :
Lewis et al. : DECISION ON
Application No.09/955,816 : PETITION
Filed: September 19, 2001 :
Attorney Docket No. 035146.2 :

This is a decision on the petition under 37 CFR 1.137(b), filed January 13, 2005, which is being treated as a request to withdraw the holding of abandonment for the above-identified application.

This application was held abandoned for failure to timely respond to the nonfinal Office Action mailed on May 5, 2004, which set a three-month shortened statutory period for reply. In the apparent absence of a timely filed response, the application was held abandoned and a Notice of Abandonment was mailed on December 14, 2004.

In the present petition, petitioner states that on September 29, 2004, petitioner submitted a reply in the form of an amendment and a petition for a two-month extension of time to respond with an authorization to charge the requisite fees. Accompanying the petition is a copy of the amendment and a petition for extension of time under 37 CFR 1.136(a) with a certificate of mailing dated September 29, 2004.

37 CFR 1.8(b) states that in the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received by the United States Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and,

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

After reviewing the papers submitted on petition, the response is considered timely filed on September 29, 2004. Accordingly, the petition is **granted**. The Notice of Abandonment is hereby vacated. The application is restored to pending status in view of the fact that a response was timely submitted on September 29, 2004.

In view of the above, the \$750.00 petition fee is unnecessary and will be refunded to Deposit Account No. 50-0766. Additionally, the \$210.00 fee for the two-month extension of time submitted on September 29, 2004, will be charged to the Deposit Account.

The matter is being referred to the Technology Center Art Unit 1744 for a review of the amendment submitted with the present petition.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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